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HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: **Hon'ble Shri Fakhruddin &**
Hon'ble Shri V.K. Shrivastava, J J.

CRIMINAL APPEAL NO. 830/1999

Lakhanlal

Vs

State of Chhattisgarh.

JUDGMENT FOR CONSIDERATION

Sd/-
V.K. Shrivastava
Judge
12/05/2006

Hon'ble Shri Fakhruddin, J.

I agree

Sd/-
Fakhruddin
Judge

Post for 12/05/2006

Sd/-
V.K.Shrivastava
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Fakhruddin &
Hon'ble Shri Vijay Kumar Shrivastava, J. J

CRIMINAL APPEAL NO.830 of 1999

Appellant : Lakhanlal, aged 25 years,
S/o shyamlal,
R/o Amaura,
Police Station Shvrinarayan,
Dist Janjgir, Champa

Vs

Respondent : State of Chhattisgarh
through
Police Station Shivrinarayan,
Dist-Janjgir Champa

PRESENT:

Shri Avinash Kumar Mishra, counsel for the appellant.
Shri Akhil Mishra, Panel lawyer for the State.
Shri PKC Tiwari, Senior Advocate with Shri Sashi Bhushan as amicus curiae.

JUDGMENT

(Delivered on 12/05/ 2006)

Per Vijay Kumar Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence dated 27.01.1999 passed by learned Additional Sessions Judge, Janjgir in Sessions trial No.255/1997 whereby holding the appellant guilty for committing the offence of murder punishable under Section 302 and the appellant has been

sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, and in default of payment of fine, to undergo additional RI for two months.

2) Facts material for disposal of this appeal in brief compass are that Shyamlal was married to Kailasabai. Out of their wedlock, one son and three daughters were born and appellant is their son. Kailasabai died of illness as she was suffering from cancer. After the death of Kailasabai, Shyamlal contacted second marriage with Sashikala and deceased Bhunda @ Shivkumar was born out of their wedlock. Appellant was living along with his father - Shyamlal, his three sisters, step mother - Sashikala, and step brother - Bhunda @ Shivkumar. After birth of Bhunda @ Shivkumar, on the assumption that he will share his right in the property, appellant developed animosity with the deceased.

3) On 04.04.1997, Sashikala, deceased Bhunda @ Shivkumar and his step sister Padma Kumari were in house. In the evening at around 7 pm, Sashikala went inside the room adjoining to the street for lighting the earthen lamp and was waiting there due to rain. Padma Kumari and Bhunda @ Shivkumar were eating gram sitting by the side of kitchen furnace. Appellant came there uttering filthy words and thereafter lifted carpenter axe, came near them and started assaulting Bhunda @ Shivkumar by that axe. Padma Kumari rushed to her step mother raising outcry and informed her that Lakhan is assaulting Bhunda @ Shivkumar by carpenter axe. At that

time Shyamlal was at the house of Manharan Thakur. Sashikala went there and informed her husband that Lakhan killed Bhunda @ Shivkumar.

4) Appellant after wielding various injuries on the neck of Bhunda @ Shivkumar, caught the dead body and carried it to the house of his uncle Radheyshyam. There, appellant confessed that he has killed Bhunda @ Shivkumar and asked for apology. Anandram, son of Radheysham, after receiving information that Lakhan has killed Bhunda @ Shivkumar came to his house; by that time crowd was assembled there. Dead body of Bhunda @ Shivkumar was taken by his mother Sashikala inside the room. He saw the dead body and also saw injuries on his neck from where blood was oozing. He came to know that Lakhan killed Bhunda @ Shivkumar and brought the dead body to his house. He was asked to lodge the report; therefore, he went to Shivrinarayan Police Station, gave merg intimation and reported the matter. Merg intimation and FIR was recorded by the Station House Officer NL Dhritlahare, who after recording both the documents went to the spot for investigation.

5) SHO conducted inquest, prepared inquest report of dead body, collected blood stained earth, control earth from the spot, seized the same and also seized blood stained carpenter axe that was lying on the spot. Dead body of Bhunda @ Shivkumar was sent for autopsy. Dr.RK Upadhyay conducted postmortem on the dead body of Bhunda @ Shivkumar. He, after autopsy describing all the injuries

found on the body of Bhunda @ Shivkumar and also expressing his opinion that the cause of death is haemorrhage and coma due to injury on head and underlying structures, gave his report to the Police. The weapon of offence carpenter axe was also examined by him, and on examination, he was of the view that injuries caused to the deceased may be caused by that weapon. Blood stained banyan of the appellant was also seized. Spot map was prepared; witnesses were examined under Section 161 of the Cr.P.C. Seized articles were sent to the Forensic Science Laboratory for chemical examination. Chemical examiner after examination, found blood over carpenter axe, appellant's banyan and blood stained earth. After completion of the investigation, challan under Section 302 of the IPC was led in the Court of Judicial Magistrate 1st Class, Janjgir, who committed the case to the Court of Sessions for trial.

6) Charge under Section 302 of the IPC was framed against the appellant and the same was read over and explained to him, who abjured the guilt. His defence was that at the time of incident, he was suffering from mental unsoundness. He was not being treated by any doctor but his father was providing him treatment from a Baiga. From this treatment, he was well for one or two years; but again the unsoundness revived and at the time of incident, he was incapable of knowing as to what he was doing.

7) Learned trial Court after due appreciation of evidence, hold that the appellant is not entitled for the benefit of Section 84

of the IPC because it was not proved that at the time of incident he was of unsound mind. Learned trial court hold the appellant guilty for committing murder of the deceased punishable under Section 302 of the IPC, therefore, convicted and sentenced him.

8) The cause of death, nature and mode has not been disputed by the appellant. Even otherwise, from the evidence of Dr RK Upadhyay (PW-13) and from autopsy report (Ex.P/20) proved by him it is established and proved that the deceased received following ante-mortem injuries and died as a result of haemorrhage and coma due to the injuries on his head and underlying structures.

1) Incised wound 9cm x 5 cm x 3 1/2 cm obliquely placed on the right side and lower part of the head over the occipital area, right lower occipital bone found fractured and the underlying part of the brain found cut and exposed blood clot present in the wound.

2) incised wound 12 cm x 5 cm x 6 cm obliquely placed on the back and left side and lower part of the head, left lower part of the occipital bone found cut, left lower part of the occipital lobe of the brain found cut and exposed blood clot present in the wound.

3) Incised wound 9 cm x 5 cm x 4 cm obliquely placed on the lower part of the neck left side up to middle of the cheek. Left side blood clot present.

4) Bruise 2.5 cm x 2.5.cm pink in colour on the upper part of the right cheek.

5) Bruise 4 cm x 3 cm pink in colour on the forehead right side.

9) Padma Kumari (PW-5), step sister of the deceased and sister of the appellant, Sashikala (PW-4), step mother of the appellant are eyewitnesses who witnessed the incident. Padma Kumari deposed that she and deceased Bhunda @ Shivkumar were eating gram sitting by the side of kitchen furnace, at that time, appellant came there uttering filthy words, took Basula (carpenter axe) and started beating Bhunda @ Shivkumar by that axe. She ran away from there raising outcry and informed her step mother. She came back along with her mother and they saw the appellant inflicting injuries on Bhunda @ Shivkumar by carpenter axe.

10) Sashikala (PW-4) in her statement deposed that she lit earthen lamp inside the room adjacent to street and was waiting there due to rain, Padma Kumari was crying that Lakhan is assaulting Bhunda @ Shivkumar with Basula (Carpenter Axe) came running from the house, therefore, she rushed to the house and saw that Lakhan was assaulting by Basula to Bhunda @ Shivkumar who inspite of her request did not stop beating Bhunda @ Shivkumar. She went to call her husband and when she came along with her husband to the spot, they saw the appellant sitting in the court yard with dead body of the deceased Bhunda @ Shivkumar. Thereafter appellant took the dead body to verandah of Radheyshyam, elder brother of her husband and left it there; then she took the body inside the room.

11) Both the witnesses {Sashikala (PW- 4) and Padma Kumari (PW-5)} have been cross examined at length. Except some minor

discrepancies, nothing has been brought on record. On close scrutiny of the statements of both the witnesses, there appears nothing to discredit their version. Padma Kumari is the real sister of appellant. She has no animosity to falsely implicate the appellant in the crime. Sashikala is mother of the deceased and step mother of the appellant. She also has no reason to falsely implicate the appellant in the crime.

12) Shyamlal (PW-3) in his statement deposed that on the date of incident he went to borrow money from Thakur. From there, when he was returning, he saw his wife coming running towards him crying "*mar dala, mar dala*"; when he enquired, she told that Lakhan killed Bhunda @ Shivkumar. He rushed to his house and saw the appellant keeping Bhunda @ Shivkumar he tried to take his custody, but could not succeed. Appellant carried the dead body to his elder brother's house and dropped it there, beg his pardon and confessed that he killed Bhunda @ Shivkumar. Radheyshyam (PW-8) who is, elder brother of Shyamlal, in his evidence deposed that appellant carrying dead body of Bhunda @ Shivkumar came to his "Parchi" and put the dead body there and beg pardon with his father, confessing that he killed his step brother. Manharan (PW-9) in his statement corroborated that appellant confessed that he killed Bhunda @ Shivkumar. Their evidence does not suffer from any infirmity which may discredit their version.

13) FIR - Ex.P/8 was proved by Anandram (PW-7) and NL Dhritlahare (PW-10). From the evidence of Puniram Kashyap

and NL Dhritlahare (PW-10), it is proved that from the place of incident carpenter axe was seized and after getting removed the banyan from the body of the appellant, it was also seized. Seizure memo is Ex.P/3 and Ex.P/4. From the evidence of NL Dhritlahare (PW-10) and Dr RK Upadhyay (PW-13), it is also proved that the weapon of offence was sent for examination to the Medical Officer. Dr RK Upadhdhyay who examined the axe opined that the injuries found on the body of the deceased may be caused by that weapon. From the evidence of NL Dhritlahare (PW-10) it is proved that seized control earth, blood stained earth; carpenter axe and banyan of the appellant were sent to FSL for examination vide application Ex.P/16. Ex.P/24 is the report of Assistant Chemical Examiner; from that report it is proved that blood stained earth collected from the spot, carpenter axe seized from the spot and the banyan recovered and seized with appellant were stained with blood.

14) Statement of eyewitnesses Sashikala (PW-4) and Padma Kumari (PW-5) is corroborated with FIR - Ex.P/8. Medical evidence of Dr RK Upadhyay PW-13 and his report is Ex.P/20. Extra judicial confession of the appellant before his father Shyamlal PW-3 and other witnesses, blood stains found on the banyan of the appellant; from all these evidence it is established and proved beyond doubt that author of the injuries found on the body of deceased Bhunda @ Shivkumar was the appellant and as a result of those injuries, deceased instantly died on the spot.

15) In cross examination of Vijay (PW-1), it has been brought that appellant was taken before a Baiga for treatment as he was Baiha (whimsical). Anandkumar (PW-7) and Radheyshyam (PW-8) also in cross examination admit that for treatment, appellant was taken to a Baiga of Mouhadih. Shyamlal (PW-3) is father of the appellant who gave explanation to all these versions. He deposed that appellant many times was sleeping off, when he was going to graze the buffaloes. Therefore, Shyamlal assuming that there was some witchcraft with Lakhan, therefore, to clear his doubt about witchcraft, he was taking Lakhan, to a Baiga for treatment. Shyamlal has very specifically denied that the appellant was suffering from any mental disorder. Vijay Kumar Tiwari (PW-1) also says that he did not know whether appellant was mentally sick or not, at the time of incident. Radheyshyam (PW-8) also denies that on the date of incident appellant was behaving like a lunatic. From all the above evidences brought on record, it is clear that appellant was taken to a Baiga by his father to remove the doubt regarding witchcraft, because of his behaviour of sleeping outside. From the evidence on record, it is also established that just before four months from the date of incident, appellant was married and was leading a married life. There is no evidence to show that the appellant was mentally sick or was of unsound mind at the time of incident.

16) During the trial on 25.08.1998, an application on behalf of the appellant was filed stating that his mental condition is not

good, therefore, he be examined. Learned trial Court made questions to the appellant and was convinced from his reply that he was not mentally sick. Despite that, issued direction that in case appellant suffers from any ailment, he should be properly treated. As a result of the Court's direction, appellant was sent to the Medical Officer for checkup who after examination opined that he has mild anxiety in the past and does not suffer from any major psychiatric problem. From the examination of trial Court, as well Medical evidence, it was evident that after the incident appellant does not suffer from any psychiatric problem. From the evidence led before the Court, it was established that on the date of incident, appellant was not suffering from any mental disorder. Earlier to the incident, appellant's behaviour and conduct were not brought on record to establish that prior to the incident appellant was suffering from any mental disorder. Prior to the incident, after the incident and during the trial, it was not proved that appellant's behaviour and conduct was like those who suffer from any mental disorder.

17) For invoking the provision of Section 84 of the IPC, it is necessary to establish that the appellant, by reason of unsoundness of mind was incapable of knowing the nature of the act that he is doing either wrong or contradictory to law. Under Section 105 of the Indian Evidence Act 1872, burden of proving the existence of circumstances bringing the case within any of the general exceptions is upon the appellant and in absence of that, the Court shall presume

the absence of such circumstances. However, the burden of proof upon the appellant is not higher than that of the party to civil proceedings. Even if the appellant was unable to establish conclusively that he was insane at the time the offence was committed. He ought to place evidence before the Court to raise reasonable doubt in the mind of the Court as regards any of the ingredients of the crime.

18) Here, in the instant case, only circumstance brought before the Court in support of appellant's insanity is that he was taken by his father to a Baiga for treatment; but his father clearly gave explanation to it, that he has some doubt regarding witchcraft played on the appellant; therefore, he took him to Baiga for removal of his doubt and to treat against the witchcraft. Hence, earlier to the incident appellant was insane or was suffering from any mental disease to raise any reasonable presumption, there is no evidence. As regards other circumstances and that available on the date of incident are that appellant was married just before four months before the date of incident and was leading married life. Appellant did not behave like insane or a person of unsound mind; to establish it clear and cogent; evidence has been brought on record. Appellant killed his step brother, therefore, in presence of people, he prays for pardon. Not only he requested his father to pardon him but also confessed his guilt. On the date of incident his behaviour was not such that may create any reasonable apprehension regarding his mental sickness. After the incident and during the trial, he was

examined by the trial Judge, as also by the Medical officer, but was not found suffering from any major psychiatric problem or unsoundness of mind. Therefore, it was neither established nor presumed that appellant was suffering from unsoundness of mind or was incapable of knowing the nature of the act committed by him.

19) From the medical evidence it is clear that appellant with a deadly weapon i.e. carpenter axe wielded injuries on head, face and neck of Bhunda @ Shivkumar. Injury over head was grevious, bones were broken and cut. The nature of injury caused to the deceased, place of the body where injuries have been caused and the weapon used by the appellant clearly establish intention of the appellant to kill Bhunda @ Shivkumar and from the oral evidence of Sashikala PW-4 and Shyamlal PW-3, it is clear that appellant after birth of the deceased was viewing his birth with an angle that he is one of the claimant in his share of property. Therefore, from the evidence on record, it was established that appellant intentionally in a gruesome manner, killed his step brother Bhunda @ Shivkumar by causing various injuries with a deadly weapon - carpenter axe.

20) Learned trial Court after close scrutiny of the evidence, rightly hold that appellant is not entitled for protection under Section 84 of the IPC and has intentionally killed Bhunda @ Shivkumar by wielding injuries with carpenter axe.

21) We are of the considered opinion that the finding, conviction and sentence passed by the trial Court does not suffer

from any infirmity which may call for any interference by this Court in its appellant jurisdiction. Therefore, the appeal deserves to be dismissed and is accordingly dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivastava
Judge

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